

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**PREAMBLE**

1. 

<u><b>Sections Affected</b></u>	<u><b>Rulemaking Action</b></u>
R12-4-309	New Section
R12-4-318	Amend
2. 

**The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 17-102 and 17-231(A)(1), (A)(2), and (A)(3)

Implementing statutes: A.R.S. §§ 17-102, 17-211(E)(3) and (E)(4), 17-231(A)(1), (A)(2), (A)(3) and (A)(4), 17-309, 17-331, and 17-332
3. 

**A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 16 A.A.C. *to be filled in by the Register editor*, March 5, 2010

Notice of Proposed Rulemaking: 16 A.A.C. *to be filled in by the Register editor*, March 5, 2010
4. 

**The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ron Day

Address: Arizona Game and Fish Department  
5000 W. Carefree Hwy  
Phoenix, AZ 85086

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5. 

**An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

Laws 2009, Third Special Session, Chapter 7, Section 28 (B)(3) allows an agency to pursue rulemaking to prevent a threat to the public health, peace, or safety. On November 30, the Governor's office approved the Department's request to pursue the rulemaking for R12-4-309 and R12-4-318.

The Commission proposes promulgating a new rule, R12-4-309 Authorization for Use of Drugs on Wildlife, to provide the Department with necessary proactive regulatory measures designed to address issues involving the use of drugs on wildlife including, but not limited to, fertility drugs, growth hormones, and tranquilizers. Individuals administering improper amounts of drugs to wildlife may cause unintended mortalities to occur. Thus, the Commission has determined that certain criteria and standards must be achieved by anyone requesting authorization to use drugs on wildlife in order to ensure the protection and preservation of Arizona's wildlife resources. The new rule provides the Department with the authority to regulate the use of drugs on wildlife by establishing an application and authorization process for allowable drug use on wildlife.

In addition, the new rule is consistent with the regulatory language, addressing the use of drugs on wildlife, recommended by the Association of Fish and Wildlife Agencies. If the administration of drugs on wildlife is not controlled by the Department, there is a potential that drug substances could be inadvertently introduced into the environment resulting in possible risk to public health and safety and Arizona's wildlife resources. Other jurisdictions within the United States, including Texas and New York, have reactively enacted regulations addressing issues that negatively impacted the state's public health and wildlife.

The Commission proposes to amend R12-4-318 to allow individuals to possess a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons. Currently, individuals are not allowed to have a firearm in their immediate possession while participating in these seasons. The Department believes that it is necessary to allow individuals participating in these seasons to possess a personal handgun for their own personal protection. In addition, the Department has an enforcement directive in effect that allows individuals to possess a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons. As a result, the law enforcement directive allows an activity that is contrary to rule. The amended rule clearly stipulates that a non-hunting handgun is a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight. The Department recently received a comment from a muzzleloader hunter asking to be allowed to carry a handgun for personal protection and the Department supports this change.

The Department believes that the proposed rulemaking will benefit the public health and welfare.

The Commission proposes additional amendments to ensure conformity with the Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

6. **A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:**

Not applicable

7. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

The proposed new rule, R12-4-309, benefits the Department and public by ensuring the Department has authority over the use of drugs on wildlife. If the administration of drugs on wildlife is not regulated by the Department, there is a potential that drug substances may be inadvertently introduced into the environment, posing a possible risk to public health and safety.

The proposed amendment to R12-4-318 benefits the Department and public by aligning the rule with a current law enforcement directive regarding the use of non hunting handguns for personal protection during archery-only and muzzleloader-only seasons.

The only costs the Department will incur are those costs associated with the rulemaking process. The Commission has determined that the benefits of the rulemaking outweigh any costs.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

See item #4.

10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Written comments will be accepted at the above address for 30 days following publication of this Notice in the *Arizona Administrative Register*. An oral proceeding regarding the proposed rules will be held as follows:

Date: May 14, 2010

Time: 8:00 a.m. to 5:00 p.m.

Location: Arizona Game and Fish Department

5000 W. Carefree Hwy

Phoenix, AZ 85086

The rulemaking record will close at 5 p.m. on May 14, 2010.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

12. **Any material incorporated by reference and its location in the rules:**

None

13. **The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

Section

- R12-4-309. ~~Repealed~~ Authorization for Use of Drugs on Wildlife
- R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

### ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

#### **R12-4-309.     ~~Repealed~~ Authorization for Use of Drugs on Wildlife**

**A.** For the purposes of this Section:

1. “Drug” means any chemical substance, other than food or mineral supplements, which affect the structure or biological function of any wildlife under the jurisdiction of the state.
2. “Person” means any individual, corporation, partnership, limited liability company, non-governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.

**B.** A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection (F).

**C.** A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at least 120 days before the anticipated start date of the activity and provide all of the following:

1. A plan that includes:
  - a. The purpose and need for the proposed activity;
  - b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
  - c. A description of the agent, drug, or method including federal approvals or permits obtained, as applicable, and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
  - d. Required approvals, including, but not limited to, any federal or state agency approvals for specific use;
  - e. Citations of published scientific literature documenting field studies on the efficacy and safety for both target and non-target species, including predators, scavengers, and humans;
  - f. A description of the activity area;
  - g. A description of the target species population and current status;
  - h. A description of the field methodology for delivery including timing, sex and number of animals to be treated, percentage of the population to be treated, and if applicable, calculated population effect; and
  - i. Short and long term monitoring and evaluation procedures.
2. Documentation regarding the experience and credentials of the applicant or the applicant’s agents as it applies to the requested activity.
3. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution.
4. Written permission from landowners or lessees in all locations where the drug will be administered.

**D.** The Department shall notify the applicant of the Department’s decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization in regards to:

1. Locations and time-frames;
  2. Drugs and methodology;
  3. Limitations;
  4. Reporting requirements; and
  5. Any other conditions deemed necessary by the Department.
- E.** A person with authorization shall:
1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer;
  2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
  3. Adhere to all drug label restrictions and precautions;
  4. Provide an annual and final report:
    - a. The annual report must include the number of animals treated, the level of treatment effect obtained to date, and any problems including mortalities or morbidities of target animals.
    - b. The final report must include the end results, including the number of wildlife treated and treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes; and
  5. Comply with all conditions and requirements set forth in the written authorization.
- F.** This Section does not prohibit the treatment of sick or injured wildlife by a licensed veterinarian or holder of a special license in accordance with R12-4-407(A)(2) and R12-4-428(B)(13), activities as authorized under R12-4-418 and R12-4-421, or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).
- G.** This Section does not limit Department employees in the performance of their official duties related to wildlife management.
- H.** The Department shall take possession of and dispose of any wildlife drugs administered in violation of this Section as authorized under A.R.S. § 17-231(A).

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

- A.** No change
- B.** Methods of lawfully taking big game during seasons designated by Commission order as “special” are designated ~~in~~ under R12-4-304. “Special” seasons are open only to individuals who possess special big game license tags issued under A.R.S. § 17-346 and R12-4-120.
- C.** When designated by Commission order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as prescribed in this Section. While taking the species authorized by the season:
  1. An individual participating in a “muzzleloader” season shall not use or possess any firearm other than muzzle-loading rifles or muzzle-loading handguns, as defined ~~in~~ under R12-4-101. Individuals participating in a “muzzleloader” season may possess a non-hunting handgun for personal protection. It is unlawful to

take any wildlife with this handgun while participating in a “muzzleloader” season. For the purposes of this Section, a non-hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.

2. An individual participating in an “archery-only” season ~~shall~~ may only use ~~and~~ or possess ~~only~~ a bow and arrow as prescribed ~~in~~ under R12-4-304 and shall not use or possess any other weapons, including crossbows or ~~any other~~ bows with a device that holds the bow in a drawn position except as authorized ~~by~~ under R12-4-216. Individuals participating in an “archery-only” season may possess a non-hunting handgun for personal protection. It is unlawful to take any wildlife with this handgun while participating in an “archery-only” season. For the purposes of this Section, a non-hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.
3. No change
4. No change
5. No change
6. An individual participating in a “limited weapon” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand-propelled projectiles; or capture by hand~~
  - a. Any trap except foothold steel traps;
  - b. Bow and arrow;
  - c. Capture by hand;
  - d. Crossbow;
  - e. Falconry;
  - f. Hand-propelled projectiles;
  - g. Nets;
  - h. Pneumatic weapons; or
  - i. Slingshots.
7. An individual participating in a “limited weapon-shotgun” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand-propelled projectiles; or capture by hand~~
  - a. Any trap except foothold steel traps;
  - b. Bow and arrow;
  - c. Capture by hand;
  - d. Crossbow;
  - e. Falconry;
  - f. Hand-propelled projectiles;
  - g. Nets;

- h. Pneumatic weapons;
  - i. Shotgun shooting shot or slug; or
  - j. Slingshots.
- 8. An individual participating in a “limited weapon-shotgun shooting shot” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~shotgun shooting shot; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand-propelled projectiles; or capture by hand~~
  - a. Any trap except foothold steel traps;
  - b. Bow and arrow;
  - c. Capture by hand;
  - d. Crossbow;
  - e. Falconry;
  - f. Hand-propelled projectiles;
  - g. Nets;
  - h. Pneumatic weapons;
  - i. Shotgun shooting shot; or
  - j. Slingshots.
- 9. An individual participating in a “limited weapon-rimfire” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~rifled firearms using rimfire cartridges; shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand-propelled projectiles; or capture by hand~~
  - a. Any trap except foothold steel traps;
  - b. Bow and arrow;
  - c. Capture by hand;
  - d. Crossbow;
  - e. Falconry;
  - f. Hand-propelled projectiles;
  - g. Nets;
  - h. Pneumatic weapons;
  - i. Rifled firearms using rimfire cartridges;
  - j. Shotgun shooting shot or slug; or
  - k. Slingshots.
- 10. No change
- 11. An individual may participate in a “juniors-only hunt” up to and throughout the calendar year of the individual’s 17th birthday, provided the individual meets the requirements ~~of~~ prescribed under A.R.S. § 17-



335.

12. No change

13. An individual participating in a “raptor capture” season shall be a falconer licensed ~~falconer~~ under R12-4-422 or ~~exempted~~ unless exempt under R12-4-407.